

ARBITRATION OF CLAIMS

*Protocol signed at Caracas February 13, 1909; exchange of notes at
Caracas September 13 and 14, 1909*

Entered into force September 14, 1909

*Terminated upon fulfillment of its terms*¹

1909 For. Rel. 617; Treaty Series 522½

PROTOCOL

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by General Juan Vicente Gomez, Vice-President of the United States of Venezuela, in charge of the Presidency of the Republic, having exhibited to each other and found in due form their respective powers, and animated by the spirit of sincere friendship that has always existed and should exist between the two nations they represent, having conferred during repeated and lengthy conferences concerning the manner of amicably and equitably adjusting the differences existing between their respective Governments with regard to the claims pending between them, since neither the United States of America nor the United States of Venezuela aspires to anything other than sustaining that to which in justice and equity it is entitled; and as a result of these conferences have recognized the great importance of arbitration as a means toward maintaining the good understanding which should exist and increase between their respective nations, and to the end of avoiding hereafter, so far as possible, differences between them, they believe it is from every point of view desirable that a treaty of arbitraiton shall be adjusted between their respective Governments.

With respect to the claims that have been the subject of their long and friendly conferences, William I. Buchanan and Doctor Francisco González Guinán have found that the opinions and views concerning them sustained by their respective Governments have been, and are, so diametrically opposed and so different that they have found it difficult to adjust them by common accord; wherefore it is necessary to resort to the conciliatory means of arbitration, a measure to which the two nations they represent are mutually bound

¹ For a discussion of settlement of claims against Venezuela, see *American Journal of International Law*, vol. 3, p. 985.

by their signatures to the treaties of the Second Peace Conference at The Hague in 1907, and one which is recognized by the entire civilized world as the only satisfactory means of terminating international disputes.

Being so convinced, and firm in their resolution not to permit, for any reason whatever, the cordiality that has always existed between their respective countries to be disturbed, the said William I. Buchanan and Doctor Francisco González Guinán, thereunto fully authorized, have adjusted, agreed to and signed the present Protocol for the settlement of the said claims against the United States of Venezuela, which are as follows:

1. The claim of the United States of America on behalf of the Orinoco Steamship Company;
2. The claim of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited;² and,
3. The claim of the United States of America on behalf of the United States and Venezuela Company, also known as the Crichfield claim.³

ARTICLE I

With respect to the first of these claims, that of the Orinoco Steamship Company, the United States of Venezuela has upheld the immutability of the arbitral decision of Umpire Barge, rendered in this case, alleging that said decision does not suffer from any of the causes which by universal jurisprudence give rise to its nullity, but rather that it is of an unappealable character, since the *compromis* of arbitration can not be considered as void, nor has there been an excessive exercise of jurisdiction, nor can the corruption of the judges be alleged, nor an essential error in the judgment; while on the other hand, the United States of America, citing practical cases, among them the case of the revision, with the consent of the United States of America, of the arbitral awards rendered by the American-Venezuelan Mixed Commission created by the Convention of April 25, 1866,⁴ and basing itself on the circumstances of the case, considering the principles of international law and of universal jurisprudence, has upheld not only the admissibility but the necessity of the revision of said award; in consequence of this situation, William I. Buchanan and Doctor Francisco González Guinán, in the spirit that has marked their conferences, have agreed to submit this case to the elevated criterion of the ARBITRAL TRIBUNAL created by this Protocol, in the following form:

The ARBITRAL TRIBUNAL shall first decide whether the decision of Umpire Barge, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered so con-

² For text of settlement dated Sept. 9, 1909, see TS 533½, *ante*, p. 1108.

³ For text of settlement dated Aug. 21, 1909, see TS 531½, *ante*, p. 1105.

⁴ TS 370, *ante*, p. 1082.

clusive as to preclude a reexamination of the case on its merits. If the ARBITRAL TRIBUNAL decides that said decision must be considered final, the case will be considered by the United States of America as closed; but on the other hand, if the ARBITRAL TRIBUNAL decides that said decision of Umpire Barge should not be considered as final, said ARBITRAL TRIBUNAL shall then hear, examine and determine the case and render its decision on the merits.

ARTICLE II

During the many conferences regarding the matter of the United States of America on behalf of the Orinoco Corporation and of its predecessors in interest against the United States of Venezuela, held between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of Venezuela, they have found the views and conclusions held and maintained by their respective Governments with respect to the rights and claims of the claimant company so diametrically opposed to each other, as to make it impossible to reconcile them through the medium of direct negotiations between their Governments.

Among these they have encountered the allegation of the United States of America, on behalf of the claimant company, that by the act of the National Congress of Venezuela, and by resolutions and other acts of the Executive Power thereof, the rights and claims insisted upon and claimed by the United States of America on behalf of the claimant company, in and under the Fitzgerald concession, the origin of the present case, are firmly recognized and affirmed as subsistent and valid, and that the Government of Venezuela has insisted and insists that the decision of Umpire Barge of April 12, 1904, which Venezuela considers irrevocable, and the decision handed down by the Federal Court and of Cassation of Venezuela on March 18, 1908, furnish of and in themselves conclusive proof against the rights and the pretensions of the claimant company, since said company, even though it be accepted as the assignee of the others, has not established itself in accordance with the laws of Venezuela, and even though it had so established itself, it was beforehand subjected to Venezuelan laws and it was agreed that these should govern and decide the contentions and differences that might arise; whereas the United States of America, on behalf of the claimant company, has declined and declines in any manner to admit that said decision of Umpire Barge or that of the Federal Court and of Cassation of Venezuela could terminate or has terminated or extinguished the rights and claims asserted by the claimant company under said Fitzgerald contract, but that on the contrary the rights and claims asserted in connection therewith by the claimant company are valid and subsisting.

In view of these and other equally conflicting conclusions reached and persistently maintained by their respective Governments with regard to this case, the Representatives herein named, animated by a firm resolve to do all

in their power to maintain and increase a good understanding between their Governments, and by a fixed desire to provide for the adjustment of the differences existing between them in this case, in justice and equity, can not escape the conclusion that the same cordial spirit which has prevailed in their many conferences already held counsels and points to the expediency and necessity of submitting this case to an impartial International Tribunal in order that the differences arising therefrom may be once and for all determined and concluded in a just and equitable manner. To reach this desirable end, and in accordance with the principles set out:

It is AGREED between William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, duly authorized to this end by their respective Governments, that the matter of the United States of America, on behalf of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, shall be submitted to the ARBITRAL TRIBUNAL created by this Protocol.

Said ARBITRAL TRIBUNAL shall examine and decide:

1. Whether the decision of Umpire Barge of April 12, 1904, under the principles of international law is not void and whether it preserves a conclusive character, in the case of the predecessors in interest of the claimant company against Venezuela;

2. If the ARBITRAL TRIBUNAL decides that said decision shall be considered conclusive, it shall then decide what effect said decision had with respect to the subsistence of the Fitzgerald contract, at that date, and with respect to the rights of the claimant company or those of its predecessors in interest in said contract;

3. If it decides that the decision of said Umpire Barge shall not be considered conclusive, said ARBITRAL TRIBUNAL shall examine on their merits and shall decide the matters submitted to said Umpire by the predecessors in interest of the claimant company;

4. The ARBITRAL TRIBUNAL shall examine, consider and decide whether there has been manifest injustice done the claimant company or its predecessors in interest regarding the Fitzgerald contract through the decision of the Federal Court and of Cassation, rendered March 18, 1908, in the suit maintained by the Government of Venezuela against the predecessors in interest of the claimant company, or through any of the acts of any of the authorities of the Government of Venezuela.

If the ARBITRAL TRIBUNAL decides that such injustice has been done, it is empowered to examine the matter of the claimant company and of its predecessors in interest against the Government of Venezuela on its merits, and to render a final decision with respect to the rights and the obligations

of the parties, fixing such damages as in its elevated judgment it believes to be just and equitable.

In every event the ARBITRAL TRIBUNAL shall decide:

- (a) What effect, if any, said decision of the Federal Court and of Cassation produced and has upon everything relating to the rights of the claimant company as assignee of the Fitzgerald contract;
- (b) Whether said Fitzgerald contract is in force; and,
- (c) If it determines that said contract is in force, then, what are the rights and the obligations of the claimant company on the one hand, and of the Government of Venezuela on the other.

ARTICLE III

William I. Buchanan, High Commissioner, representing the President of the United States of America, and Doctor Francisco González Guinán, Minister for Foreign Affairs of the United States of Venezuela, have carefully considered in the conferences they have held, the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela, also known as the Crichfield case, and have found that while the questions involved therein differ in several aspects from those in the other claims they have considered, the same radically different views held by their respective Governments in those cases exist in the case under consideration.

To the end therefore, that nothing shall be left pending that will not tend to add to the good understanding and friendship existing between the two Governments, their Representatives above-named, William I. Buchanan and Doctor Francisco González Guinán hereby agree that the matter of the United States of America on behalf of the United States and Venezuela Company against the United States of Venezuela shall be submitted to the ARBITRAL TRIBUNAL created by this Protocol, and they further agree that said TRIBUNAL is empowered to examine, consider, hear, determine and make its award in said case on its merits in justice and equity.

ARTICLE IV

The United States of America and the United States of Venezuela having, at the Second Peace Conference held at The Hague in 1907, accepted and recognized the permanent court of The Hague, it is agreed that the cases mentioned in Articles I, II, and III of this Protocol, that is to say, the case of the Orinoco Steamship Company, that of the Orinoco Corporation and of its predecessors in interest and that of the United States and Venezuela Company, shall be submitted to the jurisdiction of an ARBITRAL TRIBUNAL composed of Three Arbitrators chosen from the above-mentioned Permanent Court of The Hague.

No member of said Court who is a citizen of the United States of America or of the United States of Venezuela shall form part of said ARBITRAL TRIBUNAL, and no member of said Court can appear as counsel for either nation before said TRIBUNAL.

This ARBITRAL TRIBUNAL shall sit at The Hague.

ARTICLE V

The said ARBITRAL TRIBUNAL shall, in each case submitted to it, determine, decidé and make its award, in accordance with justice and equity. Its decisions in each case shall be accepted and upheld by the United States of America and the United States of Venezuela as final and conclusive.

ARTICLE VI

In the presentation of the cases to the ARBITRAL TRIBUNAL both parties may use the French, English or Spanish language.

ARTICLE VII ⁵

Within eight months from the date of this Protocol, each of the parties shall present to the other and to each of the members of the ARBITRAL TRIBUNAL, two printed copies of its case, with the documents and evidence on which it relies, together with the testimony of its respective witnesses.

Within an additional term of four months, either of the parties may in like manner present a counter case with documents and additional evidence and depositions, in answer to the case, documents, evidence and depositions of the other party.

Within sixty days from the expiration of the time designated for the filing of the counter cases, each Government may, through its Representative, make its arguments before the ARBITRAL TRIBUNAL, either orally or in writing, and each shall deliver to the other copies of any arguments thus made in writing, and each party shall have a right to reply in writing, provided such reply be submitted within the sixty days last named.

ARTICLE VIII

All public records and documents under the control or at the disposal of either Government or in its possession, relating to the matters in litigation shall be accessible to the other, and, upon request, certified copies of them shall be furnished. The documents which each party produces in evidence shall be authenticated by the respective Minister for Foreign Affairs.

ARTICLE IX

All pecuniary awards that the ARBITRAL TRIBUNAL may make in said cases shall be in gold coin of the United States of America, or in its equivalent in Venezuelan money, and the ARBITRAL TRIBUNAL shall fix the time of payment, after consultation with the Representatives of the two countries.

⁵ For modifications of arts. VII and X, see exchange of notes, p. 1120.

ARTICLE X⁵

It is agreed that within six months from the date of this Protocol, the Government of the United States of America and that of the United States of Venezuela shall communicate to each other, and to the Bureau of the Permanent Court at The Hague, the name of the Arbitrator they select from among the members of the Permanent Court of Arbitration.

Within sixty days thereafter the Arbitrators shall meet at The Hague and proceed to the choice of the Third Arbitrator in accordance with the provisions of Article 45 of The Hague Convention for the Peaceful Settlement of International Disputes, referred to herein.

Within the same time each of the two Governments shall deposit with the said Bureau the sum of fifteen thousand francs on account of the expenses of the arbitration provided for herein, and from time to time thereafter they shall in like manner deposit such further sums as may be necessary to defray said expenses.

The ARBITRAL TRIBUNAL shall meet at The Hague twelve months from the date of this Protocol to begin its deliberations and to hear the arguments submitted to it. Within sixty days after the hearings are closed its decisions shall be rendered.

ARTICLE XI

Except as provided in this Protocol the arbitral procedure shall conform to the provisions of the Convention for the Peaceful Settlement of International Disputes, signed at The Hague on October 18, 1907,⁶ to which both parties are signatory, and especially to the provisions of Chapter III thereof.

ARTICLE XII

It is hereby understood and agreed that nothing herein contained shall preclude the United States of Venezuela, during the period of five months from the date of this Protocol, from reaching an amicable adjustment with either or both of the claimant companies referred to in Article II and III herein, provided that in each case wherein a settlement may be reached, the respective company shall first have obtained the consent of the Government of the United States of America.

The undersigned, WILLIAM I. BUCHANAN and FRANCISCO GONZÁLEZ GUINÁN, in the capacity which each holds, thus consider their conferences with respect to the differences between the United States of America and the United States of Venezuela as closed, and sign two copies of this Protocol of the same tenor and to one effect, in both the English and Spanish languages, at Caracas, on the thirteenth day of February one thousand nine hundred and nine.

WILLIAM I. BUCHANAN [SEAL]
F. GONZÁLEZ GUINÁN [SEAL]

⁵ TS 536, *ante*, vol. 1, p. 577.

EXCHANGE OF NOTES

*The American Minister to the Minister of Foreign Affairs**September 13, 1909*

Mr. MINISTER:

Referring to a conversation on the subject, I have the honor to inform Your Excellency that the Department of State, of the United States of America assents to Venezuela's suggestion to modify Article X of the Protocol signed February 13, 1909, by fixing October 15 as the date on or before which the Arbitrators must be named, and providing for a meeting at The Hague of the Arbitrators so chosen, between January 5 and 15, 1910, to select a third; always provided that Venezuela will also agree to modify Article VII of the above-mentioned Protocol by fixing January 1, 1910, as the date for the presentation of the case, and April 30, 1910, as the date for the presentation of the counter case; and to modify Article X by fixing May 15, 1910, as the date for the meeting of the Arbitral Tribunal.

I am instructed to inform Your Excellency that the Protocol of February 13, 1909, is approved by the Government of the United States of America, and is in effect in the United States, and that the President of the United States of America transmitted said Protocol to the Senate for its information, in a message dated April 20, 1909.

I take this occasion to renew to Your Excellency the assurance of my highest and most distinguished consideration.

WILLIAM W. RUSSELL

To His Excellency

GENERAL JUAN PIETRI,

Minister for Foreign Affairs.

The Minister of Foreign Affairs to the American Minister

[TRANSLATION]

UNITED STATES OF VENEZUELA

MINISTRY OF FOREIGN AFFAIRS

Caracas, September 14, 1909

D. P. E. No. 1464

Mr. MINISTER:

I have the honor to acknowledge the receipt of Your Excellency's note of yesterday's date, in regard to fixing certain extensions and dates in connection with the Protocol of February 13th last, between the United States of Venezuela and the United States of America.

In reply I am pleased to inform Your Excellency that the Government of Venezuela assents to the 15th of next October as the date on or before which

appointment must be made of the arbitrators referred to in Article X of the above-mentioned Protocol. The Government of Venezuela also agrees that the first meeting of the arbitrators to select a third shall take place between the 5th and 15th of January, 1910; that January 1, 1910, shall be the date for the presentation of the cases of the two Governments; that April 30, 1910, shall be the date for the presentation of the counter case and May 15, 1910, the date for the meeting of the Arbitral Tribunal.

Note has been taken of the fact that the Protocol of February 13, 1909, has been approved by the Government of the United States, and is in effect in said Nation, whose President transmitted it to the Senate for its information in a message dated April 20 last.

I take this occasion etc., etc., etc.

J. PIETRI

To His Excellency

W. W. RUSSELL,
etc., etc., etc.